

APPEAL NO. 042063
FILED OCTOBER 11, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 28, 2004. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include an injury to the lumbar area. The claimant appealed the hearing officer's determination based on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance of the hearing officer's extent-of-injury determination.

DECISION

Affirmed.

The claimant attached additional documentation to his appeal that would purportedly show that his compensable injury extends to and includes his lumbar area. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See generally Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in making the complained-of determination. The extent-of-injury determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant appears to complain of ineffective assistance from the Texas Workers' Compensation Commission's ombudsman in the presentation of evidence. The claimant did not raise this matter at the hearing below, nor does the record reflect that the claimant desired to provide any additional testimony, documentary evidence or argument in support of his claim, which was not provided by the ombudsman. Accordingly, we decline to reverse the hearing officer's decision on this basis.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **GENERAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**LEON CROCKETT
1600 NORTH COLLINS BOULEVARD
RICHARDSON, TEXAS 75080-3591.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge